



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Legal Branch
P. O. Box 1720
Rancho Cordova, CA 95741-1720

STEVE WESTLY
Chair
CAROLE MIGDEN
Member
DONNA ARDUIN
Member

February 29, 2004 Franchise Tax Board Litigation Roster

All cases currently active and those recently closed are listed on the roster. Activity or changes with respect to a case appear in bold-face type. Any new cases will appear in bold-face type.

A list is also provided of new cases that have been added to the roster for the month as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board posts the Litigation Roster on its Internet site. The Litigation Roster can be found at: www.ftb.ca.gov/law/Lit_roster.pdg.

The Litigation Roster on the Internet site will be the latest version. It is normally revised on a monthly basis.

FRANCHISE AND INCOME TAX
CLOSED CASES – FEBRUARY 2004

<u>Case Name</u>	<u>Court Number</u>
Agustin, Remigio I.	Alameda County Superior Court No. HG03114558
Freyermuth, Janine	San Franciso Superior Court No. 308989
Freyermuth, Reed	San Franciso Superior Court No308973
U.S. Airways Group, Inc., et al	U.S. Bankruptcy Court for the Eastern Dist. of Virginia No. 02-83984-SSM

FRANCHISE AND INCOME TAX
NEW CASES – FEBRUARY 2004

<u>Case Name</u>	<u>Court Number</u>
	None

**FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER**

FEBRUARY 2004

ACKERMAN, PETER & JOANNE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC296334

Taxpayer's Counsel

Holly Kendig, Christopher W. Campbell

O'Melveny & Myers, LLP

Filed – 05/23/03

FTB's Counsel

Anthony Sgherzi

- Issues
1. Whether plaintiffs are entitled to a refund of taxes similar to that allowed by the Internal Revenue Service as the result of the settlement of a lawsuit against them for misappropriating the income of various partnerships.
 2. Whether plaintiffs filed timely claims for refund with respect to the years 1992 and 1993.
 3. Whether plaintiffs timely filed the suit for refund.

<u>Years</u>	1992 and 1993	<u>Amount</u>	\$4,912,037.26
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Status **Plaintiffs' Stipulation Pursuant to Code of Civil Procedure Section and Order to Continue Trial to April 8, 2004, filed February 2, 2004.**

AMDAHL CORPORATION v. Franchise Tax Board

San Francisco Superior Court Docket No. 321296

Appellate Court 1st District Court No. A101101 (FTB)

Appellate Court 1st District Court No. A101203 (Amdahl)

Taxpayer's Counsel

Timothy K. Roake

Fenwick & West LLP

Filed – 05/14/01

FTB's Counsel

Kristian Whitten

- Issues
1. Whether Section 25106 was properly applied to the facts of this case in a manner which does not discriminate against foreign commerce.
 2. Whether Section 24411 was properly applied in this case.
 3. Whether Section 24411 discriminates against foreign commerce.
 4. Whether the amount received from the United Kingdom as a credit for amounts paid under the United Kingdom's Advanced Corporate Tax is a dividend for purposes of Sections 24411 and 25106 of the Revenue and Taxation Code.
 5. Whether the amount received from the United Kingdom as a credit for amounts paid under the United Kingdom's Advanced Corporate Tax is gross income.

<u>Years</u>	1988, 1989, 1991 and 1992	<u>Amount</u>	\$2,935,439.00
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Status Plaintiff/Respondent's Request for Oral Argument mailed to all parties on October 10, 2003.

Heller, Ehrman, White & McAuliffe, LLP

Case Management Conference scheduled for March 26, 2004.

Hochman, Salkin, Rettig, Toscher & Perez, P.C.

Answer to the Complaint filed on January 22, 2004. Final Status Conference scheduled for July 8, 2004; Court Trial scheduled for July 12, 2004.

Morrison & Foerster, LLP

Years 1974-1982, 1984-1987, 1989-1991 Amount \$2,912,696.00

Status Trial Setting Conference scheduled for March 1, 2004. Discovery proceeding.

EDUCATIONAL EMPLOYEES CREDIT UNION, et al. v. Franchise Tax Board

Sacramento Superior Court Docket No. 511821

Filed - 12/20/89

Court of Appeal, 3rd Appellate District, No. 3-CV-C020733

Taxpayer's Counsel

FTB's Counsel

Joanne Garvey, & Teresa Maloney

Steven Green

Heller, Ehrman, White & McAuliffe

Issue Whether defendant's determination as to the methodology for deduction of indirect expenses against taxable investment income was proper.

Years 1980 through 1985 Amount \$1,137,006.98

Status On Appeal for decision in favor of Defendant/Respondent, waiting for Court of Appeal to set date for Oral Argument.

FARMER BROS. CO. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC237663

Filed – 09/29/00

Court of Appeal, 2nd Appellate District Court No. 160061

California Supreme Court No. S117131

U.S. Supreme Court No. 03-776

Taxpayer's Counsel

Counsel of Record

Robin C. Campbell, Esq.

Benjamin F. Miller

Anglin, Flewelling, Rasmussen, Campbell & Trytten, LLP

Issue Whether Section 24402 of the Revenue and Taxation Code is unconstitutional under the United States Constitution.

Years 06/30/92 through 6/30/98 Amount \$814,705.00

Status **Petition for Writ of Certiorari denied on February 23, 2004.**

FREIDBERG, EDWARD & TRACI E. REYNOLDS v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC-02-404182

Filed – 02/06/02

Taxpayer's Counsel

FTB's Counsel

John E. Cassinat & Ronald L. Carello

Marguerite Stricklin

Cassinat Law Corporation

Issues

1. Whether Plaintiffs' "horse breeding and racing business expenses" were deductible as business expenses in the years involved.
2. Whether expenses incurred by plaintiffs in horse breeding and racing activities were deductible as business expenses in the years involved.

Years 1991 through 1994 Amount \$149,696.00

Status **Statement of Decision in favor of Plaintiffs filed on February 2, 2004. Court Order; Judgment in favor of Plaintiffs filed on February 10, 2004. Notice of Entry of Judgment filed February 25, 2004.**

GENERAL MOTORS CORPORATION, et al. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC269404
Court of Appeal, 2nd Appellate District No. B165665

Filed – 03/06/02

Taxpayer's Counsel

Charles R. Ajalat
Law Office of Ajalat, Polley & Ayoob

FTB's Counsel

Stephen Lew, Donald
Currier & Joseph O'Heron

- Issues
1. Whether gross receipts from the disposition of marketable securities were properly excluded from the sales factor.
 2. Whether interest income was properly characterized as business income.
 3. Whether dividends received with respect to stock representing less than a 50% voting interest were properly classified as business income.
 4. Whether the limitation on deductions prescribed by sections 24402 and 24410 resulted in unconstitutional discriminatory taxation.
 5. Whether various receipts from intangible assets were properly excluded from the sales factor.
 6. Whether research tax credits were properly limited to the entity incurring the expense.
 7. Whether a deduction was properly denied with respect to foreign country taxes withheld on dividends.
 8. Whether the taxpayer is entitled to an increased deduction with respect to depreciation on assets held by foreign country subsidiaries.
 9. Whether the taxes determined to be owing by the Franchise Tax Board were properly computed and assessed.

Years 1986 through 1988 Amount \$10,692,755.00

Status **Oral Argument rescheduled on court's own motion from February 26, 2004, to March 25, 2004.**

HAMEETMAN, FRED AND JOYCE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 305968

Filed – 11/12/03

Taxpayer's Counsel

Eric L. Troff, Esq.
Gibbs, Giden, Locher & Turner, LLP

FTB's Counsel

Donald Currier

Issue Whether Plaintiffs were entitled to a business bad debt reduction.

Years 1990 & 1993 Amount \$65,738.00

Status Answer to the Complaint filed December 23, 2003.

HARDIE, GEORGE G. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC292256

Taxpayer's CounselRichard E. Posell, Gregory P. Korn
Greenberg, Glusker, Fields, Claman,
Machtinger & Kinsella, LLP

Filed – 03/18/03

FTB's CounselAnthony Sgherzi
George M. Takenouchi

Issue Whether Plaintiff was a resident of California for the year in issue.

Year 1993 Amount \$1,172,932.00

Status Further Status Conference held on January 7, 2004; Final Status Conference scheduled for July 8, 2004; Trial commence July 12, 2004.

HYATT, GILBERT P. v. Franchise Tax Board

Clark County Nevada District Court No. A382999

Taxpayer's CounselThomas L. Steffen & Mark A. Hutchison
Hutchison & Steffen
H. Bartow Farr III

Filed - 01/06/98

FTB's Counsel

Felix Leatherwood

Issues

1. Whether plaintiff was a resident of California from September 26, 1991 through April 2, 1992.
2. Whether the Franchise Tax Board committed various torts with respect to plaintiff and is subject to a claim for damages.
3. Whether the Nevada courts have or should exercise jurisdiction over the Franchise Tax Board.

Years 1991 and 1992 Amount \$13,204,611.00

Status Clark County District Court:
Hearing on Motion for Pretrial Conference held on January 26, 2004, and Scheduling Order entered.

J.H. MCKNIGHT RANCH, INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. 303484

Court of Appeal, 1st Appellate District No. A098729Taxpayer's CounselPaul D. Fogel, Esq..
Reed Smith Crosby Heafey, LLP

Filed - 05/13/99

FTB's Counsel

David Lew

Issues

1. Whether the court has jurisdiction when the interest owing with respect to the underlying assessment has not been paid.
2. Whether the "tax benefit" rule operates to allow income realized from the cancellation of indebtedness to be disregarded.

3. Whether the "contested liability doctrine" allows deductions incurred in prior years to be reported in the year the indebtedness was discharged.

<u>Year</u>	1990	<u>Amount</u>	\$97,258.00
<u>Status</u>	California Supreme Court Denied Franchise Tax Board's Request for an Order Directing Depublication of the Opinion on November 12, 2003.		

JIBILIAN, TONY & DOROTHY v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC298685

Taxpayer's Counsel

Derek L. Tabone, Esq.

Law Offices of Tabone, APC

Filed – 07/09/03

FTB's Counsel

Brian Wesley

Elisa Wolfe-Donato

Issue Whether Plaintiffs have taxable income for the years involved.

<u>Years</u>	1999-2001	<u>Amount</u>	\$209,742.00
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Status Case Management Conference scheduled for March 8, 2004. **[Proposed] Order; Defendant's Stipulation to Continue Case Management Conference to March 24, 2004, filed on February 25, 2004.**

JIM BEAM BRANDS CO. v. Franchise Tax Board

San Francisco Superior Court No. CGC-02-408203

Taxpayer's Counsel

Edwin P. Antolin

Silverstein & Pomerantz

Jordan M. Goodman, Brian L. Browdy

Horwood, Marcus & Berk

Filed - 05/21/02

FTB's Counsel

George C. Spanos

Issues

1. Whether the gain realized on the sale of all of the stock of a subsidiary was properly classified as business income.
2. Assuming the gain on the sale of all of the stock was business, whether the FTB properly computed the basis of the stock.

<u>Year</u>	1987	<u>Amount</u>	\$133,042.00
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Status **Defendant's Supplemental Reply Brief filed February 10, 2004. Motion to Continue Trial Date, set for April 5, 2004, and Continued to May 24, 2004; Settlement Conference set for March 16, 2004, and Continued to April 28, 2004. Motion for Summary Judgment set for April 8, 2004.**

K-MART, CORPORATION, et al. v. Franchise Tax Board

U.S. Bankruptcy Court for the Northern District of Illinois

Filed – 04/11/03

Bankruptcy No. 02-B02474 – Adversary Proceeding No. 03A01420

Taxpayer's Counsel

Charles F. Smith

Skadden, Arps, Slate, Meagher & Flom

FTB's Counsel

Michael Cornez

Larry Fischer

Issues

1. Whether gain realized on the sale of 20+% interest in an Australian retailer, Coles, was business income.
2. Whether the gain realized on the sale of the interest in Coles was properly treated for AMT purposes.
3. Whether dividends and interest received with respect to Coles was business income.
4. Whether the taxpayer's request to account for its Canadian inventory on a LIFO basis was properly denied.
5. Whether two insurance subsidiaries were properly excluded from the combined report.
6. If the insurance subsidiaries were includible in the combined report, whether adjustments need to be made to the property and sales factors.
7. Whether proceeds from the short-term investment of financial assets were properly excluded from the sales factor.
8. Whether section 24402 is constitutional.
9. Whether adjustments based upon federal RAR's were correctly made.
10. Whether there were other unspecified errors in adjustments made or not made to the taxpayer's returns.
11. Whether an under-payment penalty was properly imposed.

Years1986-1989, 1992-1994,
1999 & 2000Amount\$3,524,625.00 - Tax
\$ 82,590.01 - PenaltyStatus

Complaint Under 11 U.S.C. § 505 U.S. For Determination of Tax Liability and Refund of Tax Overpayments filed on April 17, 2003.

THE LIMITED STORES, INC. AND AFFILIATES v. Franchise Tax Board

Alameda Superior Court Docket No. 837723-0

Filed – 04/09/01

Court of Appeal, 1st Appellate District Court No. A102915Taxpayer's Counsel

Edwin P. Antolin

Morrison & Foerster, LLP

FTB's Counsel

Joyce Hee

Issues

1. Whether gross receipts from the sale of short-term financial instruments should be included in the sales factor.
2. Whether gain realized on the sale of a partial interest in a limited partnership formed from three subsidiaries constitutes business income.

Years

1993 and 1994

Amount

\$2,185,718.00

Status**Defendant/Respondent's Brief; Opposition to Plaintiff/Appellants' Request for Judicial Notice filed on February 18, 2004.**

MARKEN, DONALD W. & CLAUDINE H v. Franchise Tax Board

San Francisco Superior Court Docket No. 302520
Court of Appeal, 1st Appellate Dist. No. A091644
California Supreme Court No. S 104529

Filed - 04/05/99

Taxpayer's Counsel

William E. Taggart, Jr.
Taggart & Hawkins

FTB's Counsel

Marguerite Stricklin

Issue Whether plaintiffs were residents of California in 1993.

Year 1993 Amount \$244,012.00

Status Status Conference held on November 6, 2003.

MARRO, DONALD C. AND LILLIAN S. CLANCY v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC 02-414788 Filed – 11/18/02
Court of Appeal, 1st Appellate District Court No. A104139

Taxpayer's Counsel

Donald C. Marro, In Pro Per

FTB's Counsel

Kristian Whitten

Issue Whether assessments based on federal adjustments were timely made.

Years 1993 and 1994 Amount \$9,267.00

Status **Court of Appeal's Opinion in favor of Franchise Tax Board filed on February 26, 2004 (Unpublished Opinion).**

THE MCGRAW-HILL COMPANIES, INC., a New York Corporation v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC 03424737

Filed - 09/24/03

Taxpayer's Counsel

Jeffrey M. Vesely, Richard E. Nielsen & Annie H. Huang
Pillsbury Winthrop, LLP

FTB's Counsel

Anne Michelle Burr

Issues 1. Whether Plaintiff was entitled to use Marked-to-Market accounting allowed under the Internal Revenue Code when those provisions had not been adopted by California.
2. Whether other adjustments made or allowed by the Internal Revenue Service should be allowed by California.

Years 1993 and 1994 Amount \$606,744.00

Status **Court's Notice of Time and Place of Trial and Mandatory Settlement Conference filed on February 18, 2004. February 27, 2004, Case Management Conference cancelled. FTB's Motion for Summary of Judgment to be filed May 7, 2004. Mandatory Settlement Conference scheduled for August 3, 2004; Trial scheduled for August 23, 2004.**

MICROSOFT CORPORATION v. Franchise Tax Board

San Francisco Superior Court Docket No. 400444
Court of Appeal, 1st Appellate Dist. Div. 3 No. A105312

Filed – 10/19/01

Taxpayer's Counsel

James P. Kleier, Esq.
Preston Gates & Ellis, LLP

FTB's Counsel

Julian O. Standen

- Issues
1. Whether the denominator of the receipts factor was properly calculated by excluding receipts from marketable securities.
 2. Whether the limitation on the deduction of dividends provided for in Section 24402 discriminates.
 3. Whether adjustments made to increase the income of controlled foreign corporations included in the combined report were proper.

Year 1991 Amount \$1,879,809.00

Status **Defendant/Appellant's Motion and Declaration of Good Cause for Extension of Time to File Brief on April 2, 2004, filed on February 26, 2004.**

MILHOUS, PAUL B. & MARY A. v. Franchise Tax Board

San Diego Superior Court Docket No. GIC772282
Court of Appeal, 4th Appellate Dist. Division 1, No. D035601

Filed – 08/27/01

Taxpayer's Counsel

Steve Mather.
Kajan, Mather and Barish

FTB's Counsel

Leslie Branman-Smith

Issue Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

Year 1993 Amount \$227,246.00

Status Letter filed on December 24, 2003, by attorney Draper confirming agreement with Defendant/Appellant's re: briefing schedule.

MILHOUS, ROBERT E. & GAIL P. v. Franchise Tax Board

San Diego Superior Court Docket No. GIC773381
Court of Appeal, 4th Appellate Dist. Division 1, No. D035601

Filed – 08/27/01

Taxpayer's Counsel

Steve Mather.
Kajan, Mather and Barish

FTB's Counsel

Leslie Branman-Smith

Issue Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

Year 1993 Amount \$670,825.00

Status Letter filed on December 24, 2003, by attorney Draper confirming agreement with Defendant/Appellant's re: briefing schedule.

MONTGOMERY WARD LLC v. Franchise Tax Board

San Diego Superior Court Docket No. GIC802767

Filed – 12/30/02

Taxpayer's Counsel

Antolin, Pilar M. Sansone, Amy Silverstein
Silverstein & Pomerantz, LLP

FTB's Counsel

Gregory Price

Issues 1. Whether proceeds from the sale, maturity or other disposition of short-term financial instruments were properly excluded from the sales factor.
2. Whether section 24402 Rev. & Tax. Code is constitutional.

Years 1989 through 1994 Amount \$2,694,192.00

Status Plaintiff's Substitution of Attorney sent by mail to Mr. Greg Price, Stephen Lew, Charles J. Moll III and John L. Palmer on January 5, 2004. Case Management Conference held on January 9, 2004.

NEW GAMING SYSTEMS, INC. v. Franchise Tax Board

U.S. District Court For The Eastern Dist. No. CIVS-03-1126

Filed – 05/27/03

First Amended Complaint

Filed – 08/25/03

Taxpayer's Counsel

Spencer T. Malysiak
Spencer T. Malysiak Law Corp.

FTB's Counsel

Michael J. Cornez

Issues 1. Whether the federal courts have jurisdiction to review a denial of a claim for refund of state taxes and issue a declaratory judgment as to plaintiff's liability for state taxes.
2. Whether the Indian Gaming Regulatory Act (25 U.S.C. 2701) pre-empts state taxation of income earned by non-Indians from operating a casino.
3. **Whether an action can be maintained in federal court against the Board members and Executive Officer as individual under the *Ex Parte Young* doctrine to enjoin the collection of state taxes.**

Year 1996 Amount \$2,562.93

Status **Plaintiff's Civil Cover Sheet with a copy of Plaintiff's First Amended Complaint for Declaratory Judgment Injunctive Relief, and Refund of Taxes filed on August 25, 2003, received by Franchise Tax Board on February 3, 2004.**

NEW GAMING SYSTEMS, INC. & AKA INDUSTRIES, INC. v. Franchise Tax Board

Superior Court Docket No. 03AS05705

Filed – 10/10/03

Taxpayer's Counsel

Spencer T. Malysiak
Spencer T. Malysiak Law Corp.

FTB's Counsel

Michael Cornez

Issues 1. Whether New Gaming Systems, Inc., timely filed its suit for refund for the income year ended March 31, 1996?
2. Whether a declaratory relief action can be brought to prevent the collection of tax.
3. Whether a suit for refund can be maintained for a year in which the amount of tax has not been paid in full.
4. Whether Plaintiffs are liable for California taxes on income generated from leases for operating Indian casinos.

Years 1996 and 1997 Amount \$90,773.05

Status **Court granted on February 24, 2004, a continuance of Defendant's Demurrer and new date of hearing scheduled for until April 6, 2004.**

NOBLE, HOMER E. AND STEPHANIE F. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC273634
Court of Appeal, 2nd Appellate Dist. No. B167881

Filed - 05/09/02

Taxpayer's Counsel

Richard W. Craigo
Attorney At Law

FTB's Counsel

Anthony Sgherzi

Issue The issue is on what date during 1994 did plaintiffs cease to be residents and domiciliaries of California?

Year 1994 Amount \$151,632.00

Status Defendant/Respondent's Brief filed on January 14, 2004. Plaintiffs/Appellants' Reply Brief filed on January 30, 2004.

ORDLOCK, BAYARD M. & LOIS S. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC278386
Court of Appeal, 2nd Appellate Dist. No. B169465

Filed - 07/25/02

Taxpayer's Counsel

Richard C. Field
Bingham McCutchen LLP

FTB's Counsel

David Bornstein

Issue Whether the tax involved was timely assessed.

Year 1983 Amount \$12,350.00

Status **Plaintiffs/Appellants' Opening Brief; Joint Appendix filed on February 2, 2004.**

OTN, INC. & AFFILIATES v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC301102

Filed - 08/20/03

Taxpayer's Counsel

Thomas K. Bourke
Law Office of Thomas K. Bourke

FTB's Counsel

Anthony Sgherzi

Issue Whether Plaintiff is entitled to a deduction for bad debts.

Year 1995 Amount \$1,447,375.00

Status Post-Mediation Status Conference scheduled to March 10, 2004, Final Status Conference scheduled for September 7, 2004. Trial scheduled for September 13, 2004. Discovery proceeding.

PACIFIC TELESIS GROUP, INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. 319008

Filed – 02/20/01

Court of Appeal, 1st Appellate Dist. Div. 2 No. A104602

Taxpayer's Counsel

FTB's Counsel

Allan L. Schare

David Lew

McDermott, Will & Emery

Anne M. Burr

Issue What is the proper amount of depreciation deduction with respect to property acquired from former unitary affiliates?

Years 1987 through 1990 Amount \$9,960,422.00

Status **Plaintiff/Appellant's Declaration in Support of Application to Extend Time to file Opening Brief to March 26, 2004, filed on February 10, 2004. Extension granted on February 10, 2004.**

PAINE, THOMAS & TERESA A. NORTON v. Franchise Tax Board

San Francisco Superior Court Docket No. 324518

Filed – 09/13/01

Appellate Court – 1st Appellate Dist. Court No. A102401

Taxpayer's Counsel

FTB's Counsel

Edward Winslow

Marguerite Stricklin

Layman, Lempert & Winslow

Issues 1. Whether the plaintiffs became residents of California on April 10, 1990.
2. Whether "guaranteed payments" received by plaintiffs while residents of California from a partnership could be included in the income taxed by California.

Years 1990, 1996 through 1999 Amount \$144,278.00

Status Plaintiffs/Respondents' Request for Oral Argument filed on December 1, 2003.

THE PILLSBURY COMPANY, a Delaware Corp. v. Franchise Tax Board

San Francisco Superior Court Docket No. 414931

Filed – 11/21/02

Appellate Court – 1st Appellate Dist. Court No. A105155

Taxpayer's Counsel

FTB's Counsel

Jeffrey M. Vesely, Esq.

David Lew

Richard E. Nielsen, Esq.

Pillsbury Winthrop, LLP

Issue Whether California definition of gross income incorporated amendments to the Internal Revenue Code dealing with losses of Alaska Native Corporation.

Years 1986 and 1987 Amount \$1,133,040.00

Status **Plaintiff/Appellant's and Defendant/Respondent's Stipulation Designating Contents of Joint Appendix in Lieu of Clerk's Transcript; Stipulation Extending Time for Filing Briefs sent by mail on February 11, 2004.**

TOY'S "R" US, Inc. & Affiliates v. Franchise Tax Board

Sacramento Superior Court Docket No. 01AS04316

Filed - 07/17/01

Court of Appeal, 4th Appellate Court No. C045386

Taxpayer's Counsel

FTB's Counsel

Eric J. Coffill

Michael J. Cornez

Carley A. Roberts

Issue Whether gross receipts from the sale of short-term financial investment were properly excluded from the documentation of the sales factor.

Years 1991 through 1994 Amount \$5,342,122.00

Status Plaintiffs/Appellants' and Defendant/Respondent's Stipulation Extending Time for Filings Briefs, sent by mail on January 12, 2004.

VENTAS, INC. & SUBSIDIARIES v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC03423154

Filed - 08/05/03

Taxpayer's Counsel

FTB's Counsel

Amy L. Silverstein

Paul Gifford

Silverstein & Pomerantz, LLP

Issue Whether Plaintiff elected to use the mark-to-market method of accounting for California purposes.

Year 1997 Amount \$205,874.00

Status Trial scheduled for May 17, 2004, and the Notice of Mandatory Settlement Conference is scheduled for April 22, 2004. **Plaintiffs' First Amended Complaint filed February 4, 2004.**

WEINGARTEN, SAUL M. v. Franchise Tax Board

San Francisco Superior Court Docket No. 996766

Filed - 7/28/98

Taxpayer's Counsel

FTB's Counsel

Saul M. Weingarten

Marguerite Stricklin

Saul M. Weingarten & Associates

Issues 1. Whether the Board of Equalization followed proper procedures in considering the taxpayer's appeal.

<u>Years</u>	1987 through 1989	<u>Amount</u>	\$88,966.00 Tax \$22,241.75 Penalty
<u>Status</u>	Answer to Complaint filed October 27, 1998.		

<u>Issue</u>	Whether the taxpayers are entitled to a charitable deduction on the sale of property to The Nature Conservatory.
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<u>Years</u>	1991 and 1994	<u>Amount</u>	\$178,858.00
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<u>Status</u>	Trial held on January 16, 2004, and continued to January 20, 2004, and January 21, 2004.
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Issues 1. Whether Yoshinoya West, Inc. is involved in a unitary business with its Japanese parent company.

2. Whether application of the standard allocation and apportionment provision of the Revenue and Taxation Code disproportionately taxed Yoshinoya West.

<u>Years</u>	1986 and 1987	<u>Amount</u>	\$1,741,534.00
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Status **Final Status Conference held on February 10, 2004. Trial commenced on February 25, 2004, and continued to April 15, 2004.**